

### REMARKS

This election is in response to the Office Action, dated January 4, 2008 ("Office Action"). Claims 1-28 were pending; claims 1-9 and 20-28 are withdrawn by virtue of the present amendment. No new matter is added. Examination of the claims in view of the ensuing remarks is respectfully requested.

In the Office Action, Examiner required election among aspects of the claimed invention described in Groups I-II under 35 U.S.C. §§121 and 372. These Groups were noted as follows:

- I. Claims 1-9 and 20-28, drawn to a composition comprising a non-steroidal anti-inflammatory drug and a HER-kinase axis inhibitor;  
and
- II. Claims 10-19, drawn to a method of treating a condition in a mammal.

Examiner identified the technical feature as the administration of an NSAID and a HER-kinase axis inhibitor to a mammal. Examiner asserted that due to Mann et al.'s teaching of the administration of celecoxib and 2C4 to mice, the technical feature of the present invention is not special. Examiner further identified that the restriction was between product and process claims.

Applicants hereby elect the embodiment of the instant invention described in **Group II** for prosecution on the merits. Applicants submit that claims 10-19 read upon this election. Applicants reserve the right to pursue the unelected subject matter in one or more divisional applications.

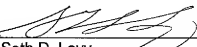
The foregoing election notwithstanding, Applicants respectfully traverse the restriction requirement and submit that it is improper. Examiner cites PCT Rule 13 as the basis for the restriction requirement. This Rule provides that "the requirement of unity of invention . . . shall be fulfilled only when there is a technical relationship among [the] inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole,

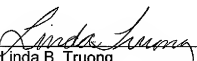
makes over the prior art." See PCT Rule 13.2.

Here, each of the "inventions" identified by Examiner includes one or more of the same corresponding special technical features -- an NSAID and a HER-kinase axis inhibitor *to modulate both the HER-kinase axis and PPAR $\gamma$  pathway*, which treats cancer and other physiologic conditions. Further, the present invention includes a number of NSAIDs and HER-kinase axis inhibitors. Conversely, Mann et al. only teaches the administration of celecoxib and 2C4 to mice to treat cancer via cyclooxygenase 2 and HER-2/neu pathways. It is respectfully submitted that at least this feature establishes unity of invention among the various groups. Withdrawal of the restriction requirement for the alleged lack of a single general inventive concept is thus respectfully requested.

All of the claims in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call either of the undersigned attorneys at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,  
David B. Agus et al.  
DAVIS WRIGHT TREMAINE LLP

By   
Seth D. Levy  
Registration No. 44,839

By   
Linda B. Truong  
Registration No. 56,461

865 South Figueroa Street, Suite 2400  
Los Angeles, CA 90017-2566  
Phone: (213) 633-6800  
Facsimile: (213) 633-6899